THE HOB'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos. 22339 of 2003, 18015, 25014, 23537, 18679, 20225, 20976, 20534, 20475, 20392, 18954, 18950, 18949 of 2004 and 1808 of 2005

COMMON JUDGMENT:

W.P.No.18015 of 2004

Between:

1. M/s Godavari Valley Labour Contract Co-operative Society Ltd., Rajahmundry and 67 others ….. Petitioners

and

1. Oil and natural Gas Corporation Ltd., rep.

By its Chairman & Managing Director,

Jeevan Bharati Building, New Delhi …. Respondents

And 2 others

Counsel for the petitioners: Sri V.Venkataramana

Counsel for the respondents: Sri E.Manohar, Senior Counsel

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W.P.Nos. 22339 of 2003, 18015, 25014, 23537, 18679, 20225, 20976, 20534, 20475, 20392, 18954, 18950, 18949 of 2004 and 1808 of 2005

COMMON JUDGMENT:

M/s Godavari Valley Labour Contract Co-operative Society Limited and several contract labourers, in this batch of writ petitions, question the action of the respondents in not considering their cases for recruitment, in terms of the agreement

dated 24.03.2003, as arbitrary and unconstitutional, and seek a direction to the respondents to consider and appoint them as technical and non-technical employees in the services of the respondent-Corporation with all consequential benefits.

While in some of the writ petitions, the petitioners seek regularization of their services, both Sri V. Venkata Ramana and Sri K. Chidambaram, learned counsel for the petitioners, would submit that the petitioners were not pressing for the relief of regularization and were merely asking for their cases to be considered, for recruitment, in terms of the agreement dated 24.03.2003. Since the facts involved are more or less common, in the entire batch, it would suffice if the facts as stated in W.P.No.18015/2004 are noted.

The 1st respondent, a statutory corporation, engaged in exploration, extraction and sale of petroleum products, has; one of its units situated at Rajahmundry, East Godavari District. Pursuant to abolition of the contract labour system in certain works and establishments under the government of India notification dated 08.09.2004, the petitioners herein, who were working as contract labour, filed writ petitions before this Court seeking a declaration that they were entitled to be absorbed in the establishment of the principal employer i.e., the 1st respondent-Corporation. In seeking the relief of absorption, the petitioners had placed reliance on the judgment of the Supreme Court in **Air India Statutory Corporation v. United Labour Union** wherein it was held that consequent upon abolition of the contract l;abour system, a direct employment stands established between the contract labour and the principal employer by eliminating the intermediary contractor. However, subsequent thereto, the Supreme Court in **Steel Authority of India Limited v. National Union Waterfront Workers** overruled the earlier judgment in **Air India Statutory Corporation** (1 supra) and held that even after abolition of the contract labour system, no direct employment gets established between the contract labour and the principal employer and if the contract system is a sham and the Industrial Court, on evidence, recorded a finding that the intermediary contractor was bogus, it was not improper to grant appropriate relief to the contract labour. Pursuant to the judgment of the Supreme Court in **Steel Authority of India Limited** (2 supra), various contract labourers, working in the 1st respondent-Corporation, are said to have invoked the provisions of the Industrial Disputes Act seeking absorption of their services, and that the Industrial disputes raised had been stayed by this Court. The contract

labourers resorted to direct action and struck work pursuant to which an agreement was entered into on 24.03.2003 confirming the earlier minutes of the meeting dated 12.01.2003. In the meeting held on 12.01.2003 between officials of the Rajahmundry Asset of the 1st respondent-corporation and the joint action committee on behalf of the contract labourers, it was agreed to create and fill 60 posts to meet the operational requirements, to support the process of recruitment, to make efforts to fill up 60 posts per year and a total number of 300 posts during a period of five years. The minutes records that the members of the society, whoever was suitable for such identified posts, as per ONGC Modified Recruitment & Promotion Rules, 1980, and was registered with the employment exchange, would only be considered for appointment by granting age relaxation wherever required. These conditions recorded in the minutes of the meeting held on 12.01.2003 is confirmed in the memorandum of agreement dated 24.03.2003, and clause IV (xx) thereof reads as under:

"As agreed to in Clause 8 of MOM dated 12.01.2003, the posts to be filled in every year for five years, will be filled in by giving due regard to seniority".

On the ground that the respondent had not notified any recruitment process, though 1 ½ years had elapsed since the agreement was entered on 24.03.2003, and despite several representations requesting the respondent to abide by the said agreement, to notify the a recruitment process and to consider the cases of contract labourers for appointment in regular posts, no response was forthcoming, the petitioners have chosen to approach this Court.

The grievance of the petitioners – contract labourers is that they are now paid a consolidated pay of Rs.5,000/- and if they are appointed afresh, on regular basis, they would get more than Rs.10,000/- per month. Petitioners would contend that since the respondent – corporation had entered into the agreement with its eyes open, it was not entitled to resile from enforcing the agreement. Petitioners would submit that they have the required experience as they have been working as contract labour for more than 10 years and are fully qualified for recruitment as per the prescribed educational standards.

On behalf of respondents 2 and 3, representing the Krishna Godavari Project of the 1st respondent-corporation at Rajahmundry, a counter affidavit is filed by Sri

N.S.L.N. Swamy, chief manger (IR) of the respondent-corporation, wherein it is stated that since the agreement is non-statutory, no enforceable right was conferred on the petitioners to seek a writ of Mandamus from this Court to implement the agreement dated 24.03.2003. It is stated that employment in the 1st respondent-corporation is governed by the ONGC Recruitment & Promotion Regulations, 1980 and that the corporation, under the said agreement dated 24.03.2003, did not agree to appoint the petitioners but had agreed to have their cases considered along with other candidates as and when recruitment takes place, provided they were sponsored by the employment exchange. It is stated that all the parties to the agreement were aware of the fact that consideration of the case of petitioners was subject to creation of posts and accord of permission for recruitment by the corporate management of the 1st respondent-corporation. It is stated that respondents 2 and 3 had appraised the corporate management of all these events on 05.04.2003, that the Rajahmundry Asset, represented by respondents 2 and 3, is neither competent to take decisions or to enter into such agreements. Reference is made to the meeting held on 12.01.2003 wherein the request of the joint action committee, representing the workmen, for regularization of their services was ruled out and it was made clear that it was not possible to take them on casual basis or to make payments directly to contractual workers as all these alternative demands were in the nature of regularization. It is stated that there is no embargo on the respondent –corporation to engage contract labourer to handle its intermittent works as the same is permitted under the Contract Labour (Regulation & Abolition) Act. It is stated that the understanding, in the meeting held on 12.01.2003, was merely tentative and, in substance, the respondents had agreed to make efforts for normal recruitment provided the corporate management sanctioned the posts and gave permission to resort to recruitment. It is stated that the competent authority, to create posts and permit filing up the posts through a process of recruitment, was the corporate management at the headquarters of the 1st respondent and that the understanding of parties, both in the meeting dated 12.01.2003 and the agreement dated 24.03.2003, was that recruitment was subject to creation of posts and permission being accorded by the corporate management to undertake recruitment and since no such permission was accorded either to create posts or to make recruitment, petitioners were not entitled to have their cases considered for appointment on regular basis.

It is stated that the respondent-corporation has been entrusting jobs, of intermittent

nature, on contract basis and has been liberally making payment to the contractors and that the contract labourers were being paid Rs.5,000/- per month which was far above the minimum wage prescribed of Rs.3,000/- per month. It is contended that employment in public sector undertakings cannot be contracted to be given or confined to any one group of persons and that the petitioners had no right either for recruitment or selection on preferential basis. It is stated that creation of posts and decision to recruit are policy decisions to be taken by the corporate management and that the writ petition in this regard is not maintainable as the petitioners neither had a legal nor a statutory right to seek such a relief.

On behalf of the first respondent, a counter affidavit is filed by Sri M.K. Basu, chief manager (P&A) R&P of ONGC, wherein reference is made to the ONGC Policies Book of Delegated Powers (BDP) 1994, as modified by office order dated 01.01.2002, wherein the power to create posts up to E-7 was delegated to the chairman and managing director of the respondent company. It is stated that since the power and the jurisdiction to accord sanction for creation of posts vests with the chairman and managing director and since the chairman and managing director had not accorded sanction for creation of posts, the relief sought for in the writ petition could not be granted. It is stated that the decision, in the minutes of the meeting dated 12.01.2003 and the agreement dated 24.03.2003, with regard to creation of posts, was illegal, ultra vires and not enforceable since the stipulations therein were without approval of the competent authority i.e., the chairman and managing director. The 1st respondent would submit that, by circular dated 13.05.1994, all establishments of the 1st respondent-corporation were informed that there would be no recruitment from outside/within the department unless the same had been examined, recommended by the general manager (human resources group) and approved by the director (p) and the chairman and managing director. Reference is also made to the government of India circular dated 10.04.2000, by which the 1st respondent is said to be guided, whereby companies were directed to reduce the number of posts by 10%. It is also stated that 1st respondent has introduced a voluntary retirement scheme for its employees as the existing man power of approximately 38000 was in excess of its requirement. Under the Scheme, 712 employees are said to have opted for voluntary retirement in the year 2003, 522 in the year 2004 and in this view also there was no possibility to create posts in the company. It is also stated that oil and gas business is highly risk and probabilistic in

nature and its growth depends upon its success, that the quantum/magnitude of activities varies from time to time and is full of uncertainties, that in view of new exploration licensing policy of the government of India, the monopoly of ONGC in the field of exploration and exploitation of oil and natural gas no longer exists and many of the oil exploratory blocks had been allotted to private companies, multi-national companies and other public sector undertakings through a competitive bidding process and this would be also a contributing factor for downsizing/optimizing the existing man power and there was no possibility of resorting to creation of posts for the purpose of recruitment. It is stated that in view thereof, no action was taken on the proposal submitted by the Rajahmundry Asset, pursuant to the minutes and memorandum of agreement dated 12.1.2003 and 24.3.2003, with regards creation of posts.

An affidavit is filed by the chairman and managing director, on behalf of the 1st respondent company, wherein it is stated that he had gone through the counter affidavit filed by Sri M.K.Basu, on behalf of the 1st respondent, that Sri M.K.Basu is authorized to file the counter affidavit on behalf of the 1st respondent and the averments were approved.

In their reply affidavit, petitioners would submit that the Book of Delegated Powers (BDP-1994) was further amended on 16.5.2002 and that the appointing authority for Class III and Class IV posts is the head, support at Assets/Basins and that the Chairman and Managing Director was the appointing authority for executive posts above the category of E-V. It is stated that even in the executive category upto grade E-4 i.e, E-1 to E-4, it was the director (human resources) who was the competent authority and not the chairman and managing director. Reliance is also placed on the employees hand book of ONGC, Rajahmundry, revised up to 31.3.2003, wherein Chapter III relates to recruitment and promotion. It is mentioned thereunder that while recruitment to executive posts is to be made centrally by the corporate office, recruitment to non-executive posts would be at the regional/project level. It is contended that under the memorandum of understanding dated 12.1.2003 and agreement dated 24.3.2003, creation of posts, contemplated in Class III and IV posts, is at Rajahmundry Project/Basin. It is stated that it is not the chairman and managing director, but the board of directors who may have the authority to create

posts. Petitioners would submit that the very fact that contract labourers were being engaged, to discharge functions of Class III and Class IV posts, for the past 15 to 20 years clearly establishes that there was need and justification for creating regular posts and it was for this reason that an understanding was arrived at in the meeting held on 12.1.2003 recording the minutes and an agreement was subsequently entered into on 24.3.2003. Petitioners would deny the respondent's contention that the minutes and agreement were illegal and ultravires and would state that the internal governance of the 1st respondent was not known to the petitioners. It is stated that it is possible that the Chairman and managing director may not be knowing about the total number of Class III and Class IV employees working in ONGC all over the country as matters relating to recruitment and other service conditions are not dealt with by the chairman and managing director. It is stated that under the corporate structure, creation of posts is by the board of directors and while the chairman and managing director is one of the members of the board, there was no delegation of powers, in his favour, to create posts. Petitioners would contend that since the respondents have not furnished details regarding the requirement of Class III and Class IV posts at Rajahmundry, necessary inference has to be drawn that such posts are required. Reference is made to letter dated 8.12.2004 addressed to the General Chief, HR, Telebhavan, Dehradun by the Chief Manager, HR of the Rajahmundry Asset wherein reference is made both to the memorandum of understanding and agreement, while requesting the head office to convey its decision as the societies were pressing hard for filling up of posts. Relying on the said letter dated 8.12.2004, petitioners would contend that both the memorandum of understanding dated 12.1.2003 and the agreement dated 24.3.2003 was to the knowledge of the corporate office. Reliance is also placed on the Nallappan report where it is stated that the optimum manpower required for Rajahmundry Asset was 723 for Class III posts and 1368 for Class IV/V posts. It is stated that the Nallappan report relates exclusively to the Krishna Godavari Asset at Rajahmundry. With regards the Voluntary Retirement Scheme it is stated that the scheme is only for officers and executives and not for Class III and Class IV employees. Petitioners would contend that in the absence of disclosing the excess staff in Class III and Class IV posts and since the Nallappan report clearly discloses the optimum manpower requirement at Krishna Godavari Asset, the respondents were not justified in contending that there is no scope either for creation of posts or for implementing the memorandum of understanding and the subsequent agreement.

Sri V.Venkataramana, learned counsel for the petitioners, whose submissions were adopted by Sri K.Chidambaram, learned counsel for the other petitioners, would submit:

1. Inaction of the respondents in not assessing the manpower requirement of Class III and Class IV posts in Rajahmundry Asset (Krishna Godavari Project) is arbitrary and irrational;

2. Since the regional/project head had suggested for a study/analysis of the manpower requirement of Class III and Class IV posts in the Rajahmundry Asset, the respondents should have placed before this Court, the actual requirements of posts at the Rajahmundry Asset and since no such details have been placed by the respondents, an adverse inference has to be drawn, out of compulsion, that 300 posts are available

3. The memorandum of understanding dated 12.1.2003 and the agreement dated 24.3.2003 are not ultra vires the powers of the signatories since nothing contrary to the recruitment rules has been agreed to by them.

4. Both the memorandum of understanding dated 12.1.2003 and the agreement dated 24.3.2003 operate on the principle of promissory estoppel and legitimate expectation and necessitate implementation by issuance of a writ of Mandamus;

5. Both the memorandum of understanding and the agreement are not in violation of any rule or regulation nor do they violate Articles 14 and 16 of the Constitution of India and as such the defence of respondents that these agreements are unenforceable is not tenable.

Learned counsel would refer to clause 8 of the Minutes of meeting held on 12.1.2003 read with Clause IV(xx) of the agreement dated 24.3.2003 which provide for filling up of 300 posts after their creation. Learned counsel would fairly concede that no promise was made by the Rajahmundry unit to create posts as it would then have been ultravires their powers. It is only stated by the signatories that all posts to be filled up by recruitment would also be made available to contract labour. Learned counsel would submit that what is being questioned in this writ petitions is the inaction of the 1st respondent – corporation and its failure to take a decision as to

whether or not to create posts since it is only if posts are created, would the question of filling up the posts arise and it is only when it is decided to fill up the posts so created, would the petitioners, under the memorandum of understanding dated 12.1.2003 and the agreement dated 24.3.2003, be entitled also to be considered. Learned counsel would contend that since the project officials, in the memorandum of understanding and the agreement, had no acted ultravires their powers, it is not open to the corporate management to contend that the memorandum of understanding and the agreement were liable to be ignored. Learned counsel would contend that an obligation is cast on the 1st respondent to analyse its manpower requirement, that it is only on such analysis and on ascertaining its actual manpower requirement would the question, as to whether additional posts are required to be created, arise for consideration. While conceding that the Nallappan report was not binding on the respondents, Sri V.Venkataramana, learned counsel for the petitioners, would submit that the endeavour of the petitioners to place reliance on the Nallappan report was to elicit a response from the respondents regarding their intention whether or not to implement the report. Learned counsel would rely on **Hira Tikko v. Union Territory, Chandigarh** and submit that once posts are created and at the stage of filling up the posts, the petitioners would have the legitimate expectation to be considered.

Learned counsel would urge that a sympathetic view be taken by the Court since all the petitioners have been working as contract labourers for more than 25 years and had no further avenues for regular appointment. Learned counsel would ventilate the grievance of the petitioners that the chairman and managing director was kept in the dark about the aforesaid events at the Rajahmundry Asset of the 1st respondent – corporation and if he were to be appraised of the factual position, the 1st respondent Corporation would have adopted a more humane approach and would have taken necessary steps to redress the long felt grievance of the petitioners for being considered for appointment on a regular basis in Rajahmundry Asset of the 1st respondent corporation.

Sri E.Manohar, learned senior counsel appearing on behalf of the respondent – corporation, would refer to the agreement dated 24.3.2003 wherein “ONGC” has been defined as Rajahmundry Asset and contend that since the agreement has been entered into by the Rajahmundry Asset of the 1st respondent – corporation,

such an agreement was not automatically binding on the corporate office more so when the signatories, in entering into such an agreement, had acted ultra vires. Learned senior counsel would submit that the power to create posts admittedly is not with the signatories of the agreement and since the 1st respondent has no intention to create posts, the question of filling up the posts and considering the cases of petitioners for recruitment, while filling up the posts, did not arise. Learned senior counsel would refer to certain portions of the counter affidavit of the 1st respondent in support of his submission that the 1st respondent has no intention of creating Class III and Class IV posts in the Rajahmundry Asset of the 1st respondent corporation. Learned senior counsel would rely on **Food Corporation of India v. Bhanu Lodh**.

Since the averments in the counter affidavit, with regards creation of posts was not in categorical terms, to a query from the Court, Sri E.Manohar, learned senior counsel, appearing on behalf of the 1st respondent, would submit that the 1st respondent has no intention, at present, to create Class III and Class IV posts in Rajahmundry Asset of the 1st respondent – corporation.

Before examining the contentions raised in these batch of writ petitions, it is necessary to note the long struggle of the contract labourers, of the Rajahmundry Asset and KG Basin of ONGC, for regularization of their services. Pursuant to the judgment in **Air India Statutory Corporation** (1 supra) wherein the Supreme Court had held that the contractor was an intermediary between the workmen and the principal employer and the moment the contract labour system stood prohibited under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, the embargo to continue as contract labourers was put an end to, that a direct relationship was provided between the workmen and the principal employer, and thereby the principal employer became responsible for taking the services of the workmen hitherto regulated through the contractor, the contract labourers of Rajahmundry Asset of ONGC filed several writ petitions seeking regularization of their services. During the pendency of the writ petitions before this Court the judgment in **Air India Statutory Corporation** (1 supra) was overruled by a Constitution Bench of the Supreme Court in **Steel Authority of India Ltd.** (2 supra), wherein the consequences which followed issuance of a notification under, Section

10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, were detailed as under:-

"(*1*) contract labour working in the establishment concerned at the time of issue of notification will cease to function;

(*2*) the contract of principal employer with the contractor in regard to the contract labour comes to an end;

(*3*) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(*4*) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;

(*5*) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

(*6*) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act. "

The Supreme Court in **SAIL** (2 supra) summarized its conclusions as under:

"A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

> (*i*) conditions of work and benefits provided for the contract labour in the establishment in question, and
>
> (ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any

contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

Pursuant to the judgment of the Supreme Court in **Steel Authority of India Limited** (2 supra), the contract labourers chose to approach the Industrial Tribunal filing applications under Section 2-A(2) of the Industrial Disputes Act. The 1st respondent - Corporation sought a writ of prohibition from this Court against the Central Government Industrial Tribunal –cum- Labour Court from proceeding with adjudication of the industrial disputes filed by the contract labourers and this Court in **ONGC v. N.Satyanarayana** held that since the Supreme Court in **Steel Authority of India** (2 supra) had held that a contract labour could never be treated as an employee of the principal employer, it was difficult to imagine that such a contract labour stood discharged, dismissed, retrenched or terminated with the expiry of the labour contract and therefore the applications filed by the workmen, under Section 2A of the Industrial Disputes Act, were not maintainable. This Court held that even where a notification has been issued under Section 10(1) of the Contract Labour Regulation and Abolition Act, the subject matter of the issue is only as whether contract labour was a ruse or camouflage and not whether there was any legal discharge, dismissal, retrenchment or termination of contract labour, much less an individual contract labour, since there was no master and servant relationship between the principal employer and the contractor. A writ of prohibition was issued by this Court restraining the Central Government Industrial Tribunal cum Labour Court from proceeding with hearing of the industrial dispute. Even prior thereto the

contract labourers of Rajahmundry Asset struck work resulting in the minutes of meeting dated 12.1.2003, being recorded and an agreement being entered into on 24.3.2003 between the management of the Rajahmundry Asset and the Joint Action Committee representing the contract labourers.

In these batch of writ petitions, the relief sought for is, in effect, implementation of certain clauses in the minutes of meeting dated 12.1.2003 read with the agreement dated 24.3.2003. The minutes of the meeting dated 12.1.2003 under the caption "BACKGROUND" takes note of the fact that while the joint action committee had demanded regularization of the members of the society or in the alternative to take them on casual basis or on term basis or to make payments directly to each of the contract worker on the ground that they had been working under contractors for the last 10 years and that the ONGC has not taken up recruitment action for a long time, the management of ONGC had ruled out regularization in view of the policy of the ONGC and also in view of the fact that courts had rejected their claim for regularization, and had made it clear that it was not possible to take them on casual basis/term basis or to make direct payment to contractual workers as all these alternative demands were in the nature of regularization. After extensive discussions, both the parties to the meeting dated 12.1.2003 agreed on several issues, among which clause 8 reads as under:

"It was agreed by ONGC to create and fill up sixty posts to meet the operational requirements and to start the process of recruitment immediately and it was also agreed that the process of recruitment of second phase will be initiated by January, 2004 and thus the ONGC shall make efforts to fill up sixty posts per year and a total of 300 posts during the period of five years. The members of the Societies whoever as suitable for such identified posts as per ONGC Modified Recruitment & Promotion Rules, 1980 and is registered with the Employment Exchange shall only be considered for such appointments by granting age relaxation wherever required."

The agreement dated 24.3.2003 in Clause I(1) defines "ONGC" to mean the Rajahmundry Asset and KG Basin of Oil & Natural Gas Corporation Limited (ONGC) and under Clause I(3) the "principal employer" to mean the head of department under whom the members of the Society were working. Clause III relates to the period of contract and sub-clause (i) thereof provides that the contract will be valid for a period of five years w.e.f. 1st January, 2003. Clause IV relates to general conditions and sub-clause (xii) thereunder reads thus:

"In continuation to clause No.6 of the Minutes of the Meeting dated 12th January, 2003, any member of the society who acquires qualification like ITI, Degree etc., during the currency of the contract will be eligible for consideration for conversion to skilled category and will also be eligible for consideration for recruitment as per clause NO.8 of the minutes of the meeting."

Sub-clause (xviii) reads thus:

"The Society would be solely responsible for the payment of any and all kinds, existing taxes payable to State Government/Central Government/Local Bodies and the society shall indemnify ONGC for all such payments. ONGC shall not be responsible for making any such payment. In case any statutory payment was not paid by the society, the same will be paid by ONGC if required to do so under the statutes, and the same will be recovered from the outstanding bills of the society. In case any statutory levies like service tax is imposed in future, such additional tax amounts shall be reimbursed by ONGC. "

Sub-clause (xx) reads thus:

"As agreed to in Clause 8 of MOM dated 12.01.2003, the posts to be filled in every year for five years, will be filled in by giving due regard to seniority"

Clause 8 of the Minutes of meeting dated 12.1.2003 read with Clause IV (xx) of the agreement dated 24.3.2003, forms the basis for the claims in the present batch of writ petitions. As can be seen from Clause 8 of the minutes of meeting dated 12.1.2003, it was agreed to by the signatories to the minutes that (i) The ONGC would create and fill up 60 posts to meet the operational requirements; (ii) to start process of recruitment immediately; (iii) the process of recruitment of second phase would be initiated by January, 2004; (iv) ONGC would make efforts to fill up 60 posts per year and a total of 300 posts within a period five years; and (v) members of the society, whoever was suitable for such identified posts as per ONGC Recruitment and Promotion Rules, 1980 and was registered with the employment exchange would only be considered for appointment by granting age relaxation, wherever required.

The only benefit, conferred under Clause 8 of the minutes of meeting dated 12.1.2003 read with Clause IV (xx) of the agreement dated 24.3.2003 was that efforts would be made to fill up 60 posts per year, a total of 300 posts during five years and that the contract labourers shall be considered for such appointment, from among those found eligible for the identified posts as per the ONGC Recruitment and Promotion Rules. As is clear from Clause I (i) of the agreement dated 24.3.2003, it is the Rajahmundry Asset and KG Basin of the ONGC which is one of the parties to the agreement dated 24.3.2003, and not ONGC itself.

ONGC is a company registered under the Companies Act. Its general administration is under the overall control and supervision of its Board of Directors. The Companies Act, memorandum of association and articles of association, confer vast powers on the board of directors, who are entitled to exercise all powers except such as the Companies Act expressly requires to be exercised in the general meeting. While the respondents submit that the power to create posts is with the chairman and managing director of ONGC, petitioners would contend that the power to create posts vests with the board of directors, the supreme decision making body of the company. It is, therefore, not in dispute that the Rajahmundry Asset and KG Basin, which is a party to the Minutes of Meeting dated 12.1.2003 and the agreement dated 24.3.2003, did not have the power to create posts. Questions relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled in this regard pertain to the field of policy which is within the exclusive discretion and jurisdiction of the 1st respondent company. It is not for Courts/Tribunals to direct corporations to have a particular method of recruitment or eligibility criteria. The power to create or abolish posts is a matter of policy to be exercised in the interest and necessity of internal administration. Creation of posts is dictated by policy decision, exigencies of circumstances and administrative necessity. **(Ramnath Pillai v. State of Kerala; Union Territory of Chandigarh v. Avtar Singh; P.U.Joshi v. Accountant General, Ahmedabad)**. Decisions made by bodies exercising public functions, which they have no power to make, would be ultra vires and without jurisdiction. Any order/decision/act which is ultra vires or without jurisdiction, is void in law, and is deprived of legal effect. The decision of the Rajahmundry Asset and KG Basin of the ONGC, and the agreement entered into by them to create posts was, admittedly, beyond their powers and was

ultra vires, without jurisdiction, void in law and deprived of legal effect. Such an agreement by the Rajahmundry Asset to create posts would not bind ONGC, nor would the company be obligated, as a result of the agreement dated 24.3.2003, to create posts in the Rajahmundry Asset of ONGC.

Sri V.Venkataramana, learned counsel for the petitioners, would however submit that the petitioners were not seeking a direction to the respondents to create posts, but were only exhorting them to examine the manpower requirement of the Rajahmundry Asset and thereafter take an appropriate decision as to whether or not posts are to be created. Learned counsel would contend that if the corporation decides to create posts and to fill up the posts so created, the petitioners would have the legitimate expectation, subject to their fulfilling the criteria prescribed by the corporation, to be also considered, along with others, for appointment in Class III and IV posts. Learned counsel would submit that since the delegation of powers enables the Rajahmundry Asset to fill up posts, once the posts are created by the board of directors of the corporation, the respondents would be bound by the remaining terms and conditions of the agreement dated 24.3.2003 read with the minutes of meeting dated 12.1.2003 in so far as it relates to recruitment to Class III and IV posts in the Rajahmundry Asset of ONGC.

Whether the Corporation should engage regular workmen or contract labour is not for this Court to examine. In the absence of any notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, prohibiting contract labour being engaged for functions being discharged by the petitioners herein, it cannot be said that the respondents were prohibited from continuing to have the services of contract labourers instead of engaging or recruiting employees and appointing them on a regular basis.

It is well settled that no employee has any right to have a vacancy filled up as soon as it occurs. The employer has the right to keep the vacancy unfilled as long as it chooses. (**Union of India v. Majji Jangamayya**). It is for the competent authorities, in their own wisdom, to decide as to whether the posts sanctioned, upon its creation, should be filled up or kept vacant.

The Supreme Court in **Bhanu Lodh** (5 supra)**,** held thus:

"Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass

the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review."

It is the case of the 1st respondent that the projects/establishments were asked not to resort to recruitment except on the recommendations of the general manager (human resources group) and approval by the director (personnel) or the chairman and managing director, that the central government guidelines require manpower reduction by 10%, that the corporation has an excess manpower of approximately 38000 persons, that in view of the new exploration licensing policy of the central government, the 1st respondent no longer enjoys monopoly and that in view of the large scale entry of private companies and multi-nationals in the oil exploration business, down-sizing/optimizing manpower had become essential. These factors cannot be said to be unreasonable or irrelevant for determining the manpower requirement of the 1st respondent company. The 1st respondent – corporation has, in its wisdom, chosen not to create any further posts in Class III and IV categories in its Rajahmundry asset and such a policy choice does not call for interference under Article 226 of the Constitution of India.

Sri V. Venkataramana, learned counsel for the petitioners, would plead legitimate expectation, promissory estoppel and place reliance on **Hira Tikkoo** (4 supra) to contend that courts can enforce compliance, by public authorities, of the obligations laid down on them if they arbitrarily or on mere whims ignore the promise made by them, and that in certain situations, on the doctrine of legitimate expectation, parties aggrieved by the action or promise of public authorities can be granted relief.

In the present batch of writ petitions, the promise to create posts is under the minutes of meeting dated 12.1.2003, and the agreement dated 24.3.2003, entered into by the Rajahmudnry Asset of ONGC and since they could not have bound themselves to act outside their authorized purpose, (since the power to create posts was admittedly beyond their powers), they could not have extended their powers by creating an estoppel, and were entitled to repudiate an undertaking which, in the first place, they had no authority to give. The Supreme Court in **Hira Tikkoo** (4 supra) itself noted

one of the principles of public law that a public body with limited powers cannot bind itself to act outside of its authorized powers and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by creating an estoppel. The plea of promissory estoppel and legitimate expectation must therefore fail.

Whether posts should be created and if so when and how many are all policy matters to be considered by the competent authorities, in the ONGC, in accordance with their requirement and necessities of administration. While it is true that the Rajahmundry Asset had suggested a study/analysis of its manpower requirement in Class III and IV posts, that would not entitle the petitioners for a mandamus from this Court directing the 1st respondent to carry out a study nor can an adverse inference be drawn therefrom that 300 posts are vacant and available at the Rajahmundry Asset requiring it to be filled up in accordance clause 8 of the minutes of meeting dated 12.1.2003 read with clause IV (xx) of the agreement dated 24.3.2003. Since examination of manpower requirement is a pre-requisite for creation of posts and is integrally connected therewith, no direction can be issued to the ONGC to make an assessment of its manpower requirement. Reports, even if they be by experts in the field, are for the competent authorities of the ONGC to consider, and not for this Court to direct the 1st respondent to implement the recommendations in the report. The Nallappan Committee report, and its recommendations, cannot therefore form the basis for seeking a writ or a direction to the 1st respondent to carry out an assessment of its manpower requirements in Rajahmundry Asset and KG Basin of ONGC. To a specific query from this Court Sri E.Manohar, learned Senior Counsel for the respondent – corporation, categorically stated that the ONGC has no intention to create posts in the Rajahmudnry Asset in the near future. In view of this categorical assertion by the learned Senior Counsel and since these are all matters of policy for the corporation, in its wisdom, to decide, the relief as sought in these batch of writ petitions cannot be granted.

Before parting with the case, it is necessary to deal with the apprehensions voiced by the petitioners, forcefully put across by their counsel, that the chairman and managing director of ONGC has been kept in dark regarding these events and if he was appraised thereof, a more humane and sympathetic approach would have been adopted by the ONGC to assuage the long pending grievances of the contract

labour, for regular appointment in the ONGC, since they have been working for more than a decade. While I have no reason to believe that the chief executive of ONGC would have been kept in the dark about the plight of the contract labourers at the Rajahmundry Asset of ONGC, I, however, make it clear that this order would not preclude the petitioners from submitting a detailed representation to the chairman and managing director, ONGC ventilating their grievances and in case such a representation is submitted, it shall be given necessary consideration and an appropriate decision shall be taken thereupon by the chairman and managing director. Needless to state that the decision taken in this regard shall be communicated to the petitioners – society.

Subject to the aforesaid observations, the writ petitions are dismissed. No costs.

Dt. 16 .11.2005

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RAMESH RANGANATHAN,J

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